



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health- Podiatric Medical Board

- ☒ Preproposal Statement of Inquiry was filed as WSR 06-11-093 ; or
☐ Expedited Rule Making--Proposed notice was filed as WSR ; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice to WSR
☐ Continuance of WSR

Title of rule and other identifying information: (Describe Subject)

New Sections - WAC 246-922-600 Sexual misconduct and WAC 246-922-620 Abuse These new rules will specify the types of conduct that will be considered sexual misconduct and boundary violations, which includes abuse, that will be considered unprofessional conduct for podiatric physicians.

Hearing location(s): Clarion Hotel
3000 South 176th Street
SeaTac, Washington 98188

Date: Jan. 18, 2007

Time: 9:30 a.m.

Submit written comments to:

Name: Arlene Robertson
Address: Podiatric Medical Board
PO Box 47866
Olympia, WA 98504-7866
Website: <http://www3.doh.wa.gov/policyreview/>
fax (360)236-2406 by (date) 01/12/2007

Assistance for persons with disabilities: Contact

Arlene Robertson by 01/12/2007

TTY (800) 833-6388 or () 711

Date of intended adoption: 01/18/2007

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Podiatric Medical Board (Board) is proposing new rules to establish consistent and enforceable definitions of abuse and sexual misconduct with patients or former patients for podiatric physicians. Because it is a greater challenge to clearly define some behaviors as moral turpitude, the proposed rules will allow the Board to take action on a broader range of inappropriate behaviors. The proposed rules will also help podiatric physicians avoid inappropriate behavior and educate the public on expectations from their health care provider.

Reasons supporting proposal:

RCW 18.130.180 (24) provides that sexual contact and abuse by podiatric physicians are violations of unprofessional conduct. Although the Board has sexual misconduct guidelines in place, it is difficult to take disciplinary action based on guidelines. The proposed rules clarify the law and will provide direction for podiatric physicians and patients by identifying the types of inappropriate behaviors considered unprofessional conduct. The proposed rules support the Governor's Executive Order to improve patient safety.

Statutory authority for adoption:

RCW 18.22.015; RCW 18.130.050

Statute being implemented:

RCW 18.130.180

Is rule necessary because of a:

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

DATE 12/04/06

NAME (type or print)

Blake Maresh

SIGNATURE

TITLE

Executive Director

CODE REVISER USE ONLYCODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

DEC 6 2006

TIME

WSR

1039

06-24-135

AM
PM

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) Department of Health - Podiatric Medical Board

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Arlene Robertson, Program Manager	310 Israel Rd SE, Tumwater, WA 98501	(360) 236-4945
Implementation.....	Arlene Robertson, Program Manager	310 Israel Rd SE, Tumwater, WA 98501	(360) 236-4945
Enforcement.....	Arlene Robertson, Program Manager	310 Israel Rd SE, Tumwater, WA 98501	(360) 236-4945

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

☒ No. Explain why no statement was prepared.

A Small Business Economic Impact Statement was not prepared under RCW 19.85.030(1) because the proposed rule does not impose costs to businesses within an industry.

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Arlene Robertson, Program Manager

Address: PO Box 47866
Olympia, WA 98504-7866

phone (360) 236-4945

fax (360) 236-2406

e-mail arlene.robertson@doh.wa.gov

☐ No: Please explain:

NEW SECTION

WAC 246-922-600 Sexual misconduct. (1) Definitions:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the podiatric physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the podiatric physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Podiatric physician" means a person licensed to practice podiatric medicine and surgery under chapter 18.22 RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, domestic partners, parents, siblings, children, guardians and proxies.

(2) A podiatric physician shall not engage in sexual misconduct with a current patient or a key third party. A podiatric physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the podiatric physician or masturbation by the podiatric physician while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the podiatric physician.

(3) A podiatric physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the podiatric physician:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
- (b) Uses or exploits privileged information or access to privileged information to meet the podiatric physician's personal or sexual needs.

(4) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the podiatric physician;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.

(5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(7) A violation of any provision of this section shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-922-620 Abuse. (1) A podiatric physician commits unprofessional conduct if the podiatric physician abuses a patient or key third party. A podiatric physician abuses a patient when he or she:

- (a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;
- (b) Removes a patient's clothing or gown without consent;
- (c) Fails to treat an unconscious or deceased patient's body or property respectfully;
- (d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this section shall constitute grounds for disciplinary action.